

REMARKS**Summary of the Office Action**

In the Office Action dated September 3, 2003, claims 1-7 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,130,418 to Van Rosmalen et al. (hereinafter "Van Rosmalen").

Summary of the Response to the Office Action

Applicants propose to cancel claim 1 without prejudice or disclaimer, to amend claims 2-3, and to add new claim 8. Accordingly, claims 2-8 are now pending in this application.

The Rejection under 35 U.S.C. § 102(e)

Claims 1-7 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Van Rosmalen.

Applicants propose to cancel claim 1 without prejudice or disclaimer and to amend claims 2-3 to differently describe the invention. Independent claim 3, as amended, recites an optical head apparatus on an optical path of a light beam between an objective lens and an information recording medium comprising at least the following:

a controller for outputting a control signal corresponding to the height of the foreign material if the height of the foreign material is higher than the floating height of the immersion lens and for outputting no signal if the height of the foreign material is lower than the floating height of the immersion lens.

Applicants respectively submit that Van Rosmalen does not teach or suggest the optical head apparatus of the instant invention with at least the features of claim 3 recited above.

Accordingly, Applicants respectfully submit that Van Rosmalen does not teach or suggest each feature of independent claim 3, as amended. As pointed out in MPEP § 2131, “[to] anticipate a claim, the reference must teach every element of the claim.” Thus, “[a] claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art of reference. Verdegaal Bros. V. Union Oil Of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).” Thus, Applicants respectfully submit that independent claim 3 is in condition for allowance as not being anticipated by Van Rosmalen. Moreover, Applicants respectfully submit that claims 2 and 4-7 should be allowed for at least the same reasons as discussed above with regard to independent claim 3 upon which they depend. In light of the cancellation of claim 1, the rejection of this claim is now moot. Accordingly, Applicants respectfully request that the rejection of claims 1-7 under 35 U.S.C. § 102(e) be withdrawn.

Newly Added Claim 8

Applicants propose to add new claim 8 to differently describe the subject matter of the invention. Applicants respectfully submit that no new matter is being introduced in these claims as they are supported at least by the recitation at page 19, lines 3-16 of the original specification as filed. Applicants respectfully submit that dependent claim 8 is allowable for at least the same reasons as set forth above with regard to claim 3 upon which it depends.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully request the entry of this Amendment to place the application in clear condition for allowance or, in the alternative, in better form for appeal. Applicants also request the Examiner's reconsideration of the application and the timely allowance of the pending claims.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite the prosecution.

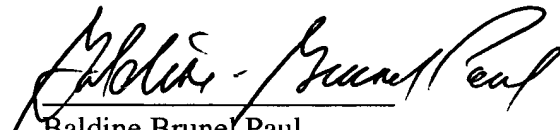
EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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